the land preparatory to the process of extraction. But it would seem illogical and arbitrary that such acts as cutting down rubber trees should or should not amount to a breach of clause 4(b) of the sub-lease according to whether they were done as part of the conduct of mining operations or were unconnected therewith. In their Lordships' opinion the whole purpose of clause 4(b), in requiring an orderly working of the land, must have been to ensure that such operations as the sub-lessees conducted on the surface should be regulated and controlled so as not to exceed what should be reasonably required to enable their mining operations to proceed. There are good reasons for this: first, the sub-lessors have an interest in ensuring that the sub-lessees concentrate their effort and their labour force on the operations of mining rather than disperse them on other activities: secondly, if the rubber trees were to be cleared prematurely, before the sub-lessees were ready to commence mining in the area cleared, fresh vegetation would grow up, necessitating fresh cleaning operations, thus adding to the time and expense required before minerals could be won: thirdly under clause 15 of the sub-lease the sub-lessors retain an interest in the preservation of the rubber trees on the land until such time as they are required for mining. All of these considerations point, in their Lordships' opinion, towards a construction of "work the land" more extended than that for which the respondents contend, and one which would cover any operations over the land.

Finally it appears to their Lordships that, on the respondents' argument, and on the interpretation of clause 4(b) of the sub-lease which was accepted by the Federal Court, namely that the respondents committed no breach of clause 4(b), the appellants would have no remedy, by indemnity or otherwise, against the respondents, yet might themselves be liable to a fine under sections 18 and 120 of the Mining Enactment. Such a surprising result is avoided by the wider interpretation of "work the land".

Their Lordships' therefore, on the whole, are of opinion that the interpretation accepted by Chang Ming Tat J. was correct. On the question whether he exercised his discretion correctly, their Lordships have already stated that the Federal Court expressed no opinion. The respondents in their printed case have not invited their Lordships to review the trial judge's decision on this point, and their Lordships are of opinion that it is not open to their Lordships to do more than to decide the point of legal interpretation referred to them.

Their Lordships will advise the Head of Malaysia that this appeal be allowed and the judgment of Chang Min Tat J. restored. The respondents must pay the appellants' costs in the Federal Court and before the Board.

Appeal allowed.

Solicitors: *Lewis, Lewis & Co.*, agents for *Skrine & Co.; Caster, Vowles, Turner & Loeffler* agents for *Lim Cheng Ean & Co.*

SINGAPORE REPORTS

KHEW AH BAH v. HONG AH MYE

[O.C.J. (Choor Singh J.) June 22, 1971]

[Singapore — Suit No. 61 of 1969]

Landlord and Tenant — Claim for possession — Vacant land leased with permission to build thereon — Payment of ground rent — Semi-permanent house — Landlord terminated tenancy and claimed possession — Compensation.

Equity and Trust — Tenancy coupled with an equity — Equitable right to remain on land by virtue of expenditure on the land — Satisfaction of equity.

The defendant purchased for $110 an attap house in 1934 which stood on land belonging to a chettiar to whom he paid $3 per month as ground rent. The land changed hands several times and in 1963 was purchased by the plaintiff. The defendant continued in occupation of his attap house and kept repairing it from time to time. In 1963 the defendant carried out major repairs to the house and in the process enlarged the house and changed its character from an attap house to a semi-permanent house with zinc roofing. In 1968 the plaintiff gave notice to quit to the defendant and thereafter brought these proceedings in which he claimed possession of the house on the ground that it was a "new building" built in 1963; that therefore it did not come within the purview of the Control of Rent Ordinance and that as the tenancy had been determined he was not precluded from recovering possession.

Held: (1) on the evidence before the court, there was no doubt at all that the house which now stood on the land was a "new building" within the meaning of the Control of Rent Ordinance and therefore did not come within its purview;

(2) where a landlord has let vacant land with permission to the tenant to build thereon and the tenant has expended money in putting up a building on the land it is not sufficient for the landlord to give a valid notice to quit in order to recover possession of his land. The tenant in such a case has a tenancy coupled with an equity — an equitable right to remain on the land so long as he continues paying the ground rent. Not only must the tenancy be validly determined but the equity must also be satisfied by the landlord before he can recover possession. It is for the court to say, on the facts and circumstances of the case, how the equity may be satisfied;

(3) in the circumstances of this case the plaintiff should be allowed to recover possession of the premises on condition that he makes reasonable compensation to the defendant. As the plaintiff has offered $15,000 to the defendant for vacant possession, which offer the court considers very generous the defendant is ordered to deliver vacant possession of the premises within three months and the plaintiff is ordered to pay the defendant the sum of $15,000 upon delivery of vacant possession.

Observations on position of separate ownership of land and building thereon.

Cases referred to:

(1) *Chua Sai Ngoh* v. *Beh Ai Meng*, [1955] M.L.J. 167.

(2) *Ramsden* v. *Dyson*, L.R. 1 H.L. 125.

(3) *Plimer* v. *Wellington Corpn.* (1884) 9 App. Cas. 449.

(4) *Ahmad Yar Khan* v. *Secretary of State for India*, (1901) L.R. 28 I.A. 211.

(5) *Chalmers* v. *Pardoe*, [1963] 1 W.L.R. 677.

(6) *Inwards* v. *Baker*, [1965] 1 All E.R. 446.

(7) *Kwek Kim Hock* v. *Ong Boon Siong*, [1954] M.L.J. 253.

SUIT.

Edward Y. T. Loke for the plaintiff.

Tan Sri Syed Esa Almenoar for the defendant.

Cur. Adv. Vult.

Choor Singh J.: This is a claim for possession of house No. 106-B Coronation Road West, Singapore, which is occupied by the defendant.

The facts shortly are these. The house in question was formerly known as 398-1 Coronation Road West, Singapore. There is no evidence as to when it was first built or who built it but it is agreed by the parties that it was built some time before 1934 as an attap house with the permission of the owner of the land, one Palainappa Chettiar, who was paid $3.00 *per mensem* as ground rent. The earliest known owner of the attap house was one Ng Kew.

The defendant alleges that he purchased the attap house from Ng Kew in 1934 for $110.00 and ever since has been paying $3.00 per month as ground rent to the owner of the land. The plaintiff's witness Theynappa alleges that in 1934 he was the agent in Singapore of Palainappa Chettiar who was then in India; that in that year Ng Kew sold the hut for $150.00 to Palainappa Chettiar and that soon thereafter the house was let to the defendant at a rental of $3.00 per month. I find this difficult to believe. I accept the defendant's version which is supported by his witnesses that he purchased the attap house from Ng Kew for $110.00 and thereafter paid $3.00 per month as ground rent to the owner of the land. There is further support for the defendant's version and it will appear as the story unfolds. Palainappa Chettiar died in India and in 1952 the property was sold by the administrator of his estate to one K.V.R.K. Ramanathan. The description in the conveyance of the property conveyed does not mention any house. In 1956 Ramannathan sold the property to M. Theynappa Ltd. and again the description in the conveyance of the property conveyed does not mention any house. Furthermore, by their letter dated 3rd July, 1957, Messrs. Eber & Tan the solicitors for the vendor informed the Secretary of the Rural Board that "only the land was conveyed by Ramanathan to M. Theynappa Ltd" In my opinion this letter proves conclusively that the house on the land belongs to the defendant. In 1963 M. Theynappa Ltd. sold the property to the plaintiff who acquired it subject to the defendant's right in respect of the land because a purchaser steps into the shoes of the vendor and takes the title of the vendor subject to existing rights. On the 27th November, 1968, the plaintiff served a notice to quit on the defendant calling upon him to "quit and deliver up possession of the whole of the house known as No. 106-B Coronation Road West (formerly known as 398-1 Coronation Road West) held by you as tenant of the plaintiff at the rental of $3.00 per month."

The plaintiff contends that the house was rebuilt in 1963; that it is a "new building" within the meaning of the Control of Rent Ordinance; that consequently it does not come within the purview of the said Ordinance and that as the tenancy has been determined he is not precluded from recovering possession of the premises.

The first question which arises for determination is whether or not the premises are affected by the Control of Rent Ordinance. The defendant concedes that he has been repairing and renovating the house from time to time but he denies that it was rebuilt in 1963. I was invited to inspect the premises which I did and I must say that the visit to the house in question was very helpful. One cannot make out much from photographs and plans and there is nothing like seeing the building which is the subject of the dispute. Having considered carefully the evidence of all the witnesses on this point and having inspected the photographs of the old attap house and the photographs and plans of the present house which stands on the land and having seen the house I have no doubt at all that it is no longer the "attap house" which was first permitted to be erected on the land by the then landlord. It has changed in character and is now a semi-permanent house of good timber with zinc roofing, larger in area than the old attap house and also quite different from it in shape, size and appearance. There is also a stone retaining wall which does not appear in the old photographs. Several other improvements have been made. There is now a verandah along the whole front of the house. The house is painted with oil paint. It is difficult to say whether the old attap house was completely demolished at any time after 1934 but the present house has very little resemblance to it. The last occasion when major repairs were done was in 1963 and they were carried out with the approval of the Chief Building Surveyor. In the process of repairing it the defendant enlarged the house. The defendant maintains that the house was not rebuilt but concedes that major repairs were carried out such as replacing the attap roof with a zinc roof. His counsel concedes that the house has been enlarged but submits that the defendant has a right to do so and that the enlargement of a house does not make it a new house. On the evidence before me I have no hesitation in holding that it is a "new building" within the meaning of the Control of Rent Ordinance.

Counsel for the defendant submits that as the house belongs to the defendant the notice to quit is bad in law because it calls upon the defendant to quit and give up possession of the house which belongs to him and which does not belong to the landlord and that the notice to quit should have asked the defendant merely to vacate the land. I do not think there is any merit in this submission. The plaintiff gave the notice to quit on the basis that both the land and the house belong to him; that the defendant is his tenant and that the house was let to him at a rent of $3.00 per month. The plaintiff's case has ben presented on that basis and I do not think that the notice to quit is bad in law.

Counsel for the defendant's next submission is of some importance and should be of great concern to landlords who let vacant land and grant permission to the tenant to build thereon. He submits that when the land and a building on it is owned separately, the landlord owning the land only and the tenant owning the building, it is not sufficient for the landlord to give a valid notice to quit in order to recover his land; the tenant must be compensated when called upon to vacate the land.

Counsel for the plaintiff questions the proposition that land and a building on it can be owned separately and relies on the well-established principle of English

common law that a building becomes the property of the owner of the land. He also cites *Chua Sai Ngoh* v. *Beh Ai Meng*,[1] where Thomson J. (as he then was) after going through all the local cases held that in the Federation the general principle of the English law as embodied in the maxim *quicquid plantatur solo, solo cedit* applied; that it was based on the presumption that annexation of the chattels to the land was intended to be permanent; and that if the nature, degree and object of the annexation be such as to show that the intention was to annex the chattels to the land only temporarily, then the general rule will not apply. Counsel submits that this general principle of English common law applies in Singapore.

It would appear that in Singapore the Control of Rent Ordinance recognizes separate ownership. The definition of "premises" which, if it were split into paragraphs and if words not material were omitted, would read: —

"Premises" means: —

(1) any dwelling house, flat, factory, office, shop or school;

(2) any other building, permanent or temporary, in which persons are employed or work; and

(3) any land on which any such building is, or has been erected with the consent of the landlord.

It will be seen that the third paragraph expressly contemplates the case where the landlord is not the true owner of the building. The landlord who gives the consent must of course be the landlord at the time when consent is given.

It is not necessary in this case to decide whether or not the plaintiff is in the eyes of the law the owner of the house in question by virtue of the general principle of the English common law already referred to because the question of compensation for the defendant in the circumstances of this case falls entirely within the province of equity. Even if the plaintiff is deemed to be the lawful owner of the house, the defendant has, as shall be seen presently, certain rights in equity which must be satisfied by the plaintiff before he can recover possession of his property. The law relating to cases of this kind was stated by Lord Kingsdown in the case of *Ramsden* v. *Dyson*.[2] The passage is at page 170: —

"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation created or encouraged by the landlord that he shall have a certain interest, takes possession of such land with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory* v. *Mighell*, and, as I conceive, is open to no doubt..."

In *Plimer* v. *Wellington Corporation*,[3] the Privy Council expressly affirmed and approved the statement of the law made by Lord Kingsdown in *Ramsden* v. *Dyson*. The principle was again approved and applied by the Privy Council in *Ahmad Yar Khan* v. *Secretary of State for India*,[4] and in *Chalmers* v. *Pardoe*.[5] It is quite plain from these authorities that, if the owner of land requires another, or indeed, allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to enable him to stay there. And the case of a tenant who is paying ground rent for the use of the land on which he has been allowed to erect a dwelling house is even stronger He has a tenancy coupled with an equity. In such a case the landlord cannot recover possession of his land by merely terminating the tenancy; he must also satisfy the equity. In *Plimer's* case the Privy Council opined that the court must look at the circumstances in each case to decide in what way the equity can be satisfied. In the recent case of *Inwards* v. *Baker*,[6] Lord Denning, M.R. explained the doctrine as follows, at page 449: —

"It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the court to say in which way the equity can be satisfied."

In the present case the house was built with the permission of the then owner of the land who granted a monthly tenancy of the land at a rental of $3.00 per month. The person who built the house must have been led to believe that he would be allowed to remain on the land so long as he continued paying the ground rent of $3.00 per month for otherwise he could not have built his house on land which did not belong to him. I think this is a fair inference in the absence of evidence to the contrary and is supported by the fact that for 34 years *i.e.* from 1934 to 1968, none of the defendant's successive landlords took any step to determine his tenancy. When the defendant purchased the house in 1934 for $110.00 and started to pay the ground rent of $3.00 per month he acquired a monthly tenancy coupled with an equity — an equitable right to remain on the land so long as he continued paying $3.00 per month. All the successive owners of the land including the plaintiff purchased it with notice of the defendant's rights in respect of the land and they continued to receive from him $3.00 per month as ground rent. The defendant has been repairing the house from time to time which he had a right to do but in 1963 in carrying out major repairs he not only enlarged the house but also transformed it into a "new building" within the meaning of the Control of Rent Ordinance and thereby removed it from the ambit of that Ordinance. It must be emphasised that he carried out this so-called rebuilding of the house long before his tenancy was determined and he did it without any ulterior motive. His obvious motive was to live in a more comfortable house. And now that his tenancy has been determined by the plaintiff, must the defendant give up possession of his valuable house to the plaintiff? That would in my opinion result in injustice to the defendant. The authorities show that in cases of this kind the landowner must satisfy the equity of the tenant or licensee who has expended money on his land. The plaintiff must therefore satisfy the defendant's equity before he can recover possession of the premises. And how is this equity to be satisfied? That I think is the fundamental question in this case.

After full and anxious consideration of the whole matter I have come to the conclusion that the plaintiff

should be allowed to recover possession of the premises on condition that he makes reasonable compensation to the defendant for what is, in the word of Taylor J. in *Kwek Kim Hock* v. *Ong Boon Siong*,[7] "tant-amount to expropriation". I am informed that the plaintiff has offered compensation to the defendant in the sum of $15,000.00 for vacant possession of the premises and that this offer has been rejected by the defendant. I have inspected the house and in my opinion the plaintiff has made a very generous offer. Without knowledge of this offer I would have assessed compensation at a sum well below $15,000.00. There will be an order that the defendant do deliver vacant possession of the premises to the plaintiff within three months from today and that the plaintiff do pay to the defendant the sum of $15,000.00 upon delivery of vacant possession of the premises. Each party will pay his own costs.

Order accordingly.

Solicitors: *Edward Y. T. Loke; Almenoar & Co.*

V.S.L. PRESTRESSING (AUSTRALIA) PTY. LTD. v. D.J. MULHOLLAND

[O.C.J. (Choor Singh J.) July 29, 1971]

[Singapore — Suit No. 903 of 1971]

Master and Servant — Restraint of trade — Employee gaining knowledge of confidential information — Trade secret — Meaning of — Right of ex-employee to compete with former employer.

Practice and Procedure — Interim injunction — Order for early trial — Trial without pleadings — R.S.C. 1970, O. 29 r. 5.

The defendant, a professional civil engineer was employed by the plaintiffs who were specialist sub-contractors in civil engineering operating in Australia. The plaintiffs had a licence from Losinger of Berne, Switzerland, for the use of the V.S.L. system of prestressed construction. The plaintiffs employed the defendant, gave him training and experience in the V.S.L. system for prestressing construction and sent him to Singapore as their manager for South-East Asia. In the course of his employment the defendant had access to a wide range of confidential documents such as manufacturing drawings, specifications, operational drawings, installation instructions, cost data and market survey information. After serving for over one year as the plaintiffs' manager for South-East Asia, the defendant suddenly resigned and threatened to set up in business in competition with the plaintiffs in the prestressed construction field. The plaintiffs sought an injunction to restrain the defendant from utilising or profiting from the information or knowledge gained by the defendant in the course of his employment with the plaintiffs, and from engaging in any business and employing therein such design or technique and other processes similar to those used by the plaintiffs within Singapore for the period of one year.

Held: (1) an employer cannot prevent his employee from using the skill and knowledge in his trade or profession which he has learnt in the course of his employment;

(2) the case in which the court will intervene for the purpose of protecting the former employer is when use is made, not of the skill and know-how which the employee has acquired but of any trade secret of the employer which the employee has no right to use or reveal. Trade secret means some proprietary right of the employer, either in the nature of trade connections or in the nature of some secret process of manufacture;

(3) in this case the defendant was never entrusted with any trade secret within the meaning of that expression as used in this type of cases and the plaintiffs were therefore not entitled to the injunction which they sought.

Cases referred to:-

(1) *Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Co. Ltd.* [1894] A.C. 535.

(2) *Sir W.C. Leng & Co.* v. *Andrews* [1909] 1 Ch. 763.

(3) *Mason* v. *Provident Clothing & Supply Co. Ltd.* [1913] A.C. 724.

(4) *Herbert Morris Ltd.* v. *Saxelby* [1916] A.C. 688.

(5) *Terrapin Ltd.* v. *Builders' Supply Co. (Hayes) Ltd.* [1960] R.P.C. 128 at p. 130.

(6) *Cranleigh Precision Engineering Ltd.* v. *Bryant* [1965] 1 W.L.R. 1293 at p. 1317.

SUIT.

M. Karthigesu for the plaintiffs.

C. H. Smith (*Lim Teck Hui* with him) for the defendant.

Cur. Adv. Vult.

Choor Singh J.: The plaintiffs are specialist sub-contractors in civil engineering and are incorporated in Australia. They specialise in the prestressing and rock anchoring of building structures. The plaintiffs have an office in Singapore. On 24th July, 1970 they appointed the defendant as their manager for South-East Asia. On 12th June, 1971 the defendant resigned from the service of the plaintiffs. On 16th June, 1971 the plaintiffs by an *ex parte* application obtained an *interim* injunction against the defendant restraining him from doing any of the following acts until the hearing of a motion for an order that the said injunction do continue until the trial of this action:—

(1) utilising or in any way profiting from the information or knowledge which has been communicated to the defendant by the plaintiffs or obtained by the defendant in the course of his employment with the plaintiffs as the plaintiffs' South-East Asia manager stationed in Singapore;

(2) interfering and intermeddling with the plaintiffs' business or its servants or workmen or agents;

(3) directly or indirectly engaging or concerning himself in and business of the kind carried on by the plaintiffs, within Singapore for a period of one year from date hereof; and

(4) divulging to any person firm or company or body or persons whomsoever any information concerning the business or the finance of the plaintiffs.

At the hearing of the motion, the court ordered an early trial of the action under Order 29 rule 5; that the trial be without pleadings and that the *interim* injunction do continue until the trial.

Counsel for the plaintiffs has now applied to vary the third part of the injunction to read as follows: —

(3) "directly or indirectly engaging or concerning himself in any business and employing therein such design or techniques and other processes whatsoever similar to those used by the plaintiffs within Singapore for the period of one year from the 16th June 1971"

The evidence shows that the plaintiff company has been in existence in Australia for six years. The plaintiffs are, what may be called specialist sub-contractors who work in conjunction with building and civil engineering contractors on projects which include